IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1317 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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DM ZALA
Versus
RA VYAS & others

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Appearance :

Mr. A.S. Supehia for Mr. I.S. Supehia for the petitioner

Mr. Maulik Nanavati, AGP, for the respondents

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 26/06/2007

ORAL JUDGMENT

1 In this petition under Article 226 of the Constitution of India, the petitioner has challenged communication dated 25th March 1996 of the respondent-Authority, by which, adverse remarks in the annual confidential report of the petitioner for the period from 1.4.1994 to 24.10.1994 came to be conveyed to the petitioner, as being unreasonable, arbitrary and against the guidelines issued by the Settlement Commissioner, Gujarat State, in Government Circular dated 29.4.1991 directing the concerned Authorities to communicate adverse remarks of the concerned employees within a period of six weeks on completion of confidential report.

2 Shri Supehia, learned counsel for the petitioner, in support of his submission, has relied upon Government Circular dated 29.4.1991 issued by the Settlement Commissioner and the guidelines issued thereunder with regard to time-limit in which the adverse remarks are to be communicated. He also relied upon the judgment and order dated 12.1.1996 passed by the learned Single Judge of this Court in Special Civil Application No.6068 of 1995 [A.N.Trivedi vs. B.P. Meena, Director of Land Records] wherein, the learned Single Judge has, following the judgment in the case of C.N. Chavda vs. Director General of Police, Gujarat State, reported in 1992 (1) GLH 209, quashed and set aside certain adverse remarks communicated to the employee beyond the prescribed period. He has submitted that, in both the above cases, there is an inordinate delay in communicating adverse remarks i.e. beyond the period of 12 months and, admittedly, in the present case, adverse remarks were communicated to the petitioner by letter dated 25.3.1996 after period of 12 months, for which, no justification has been given by the Authorities.

3 Learned Assistant Government Pleader has submitted that representation submitted by the petitioner against the adverse remarks was duly considered by the Reviewing Authority and came to be rejected and the said order was also communicated to the petitioner. According to the learned Assistant Government Pleader, delay caused in conveying adverse remarks is due to certain administrative reasons.

4 Heard learned counsel for the parties and perused the record.

5 On perusal of the record, it transpires that, by registered letter dated 25th March 1996, adverse remarks for the period commencing

from 1.4.1994 to 24.10.1994 were conveyed to the petitioner. Even if the end of the year is considered relevant for completing confidential report of an employee, then also, from 31.3.1995, there is delay of about 12 months and, from 24.10.1994, the delay is even more than that.

6 The purpose of communicating adverse remarks to an employee is to mitigate or to overcome short-comings within a reasonable time and make him alert and agile, so that he can perform his duty with all due diligence. As observed in the case of State of Gujarat vs. Suryakant Chunilal Shah, reported in 1999 (1) SCC 529, purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. In the present case, admittedly, communication of adverse remarks is beyond the period prescribed by the Government Circular and the guidelines. Under the circumstances, I do not see any justification for rejecting the representation of the petitioner without disclosing any reasons. This Court is conscious about the decision of the Apex Court in the case of Union of India vs. E.G. Nambudiri, AIR 1991 SC 1216 that whether the Authority considering representation of an employee against adverse remarks is duty bound to record reasons and communicate the same. In the present case, no affidavit is filed justifying the order of rejection, which is cryptic, and even recording of reasons on file is also not shown. It goes without saying that, at least, reasons must exist on record or on file of the concerned employee. I am, therefore, of the opinion that belated communication of adverse remarks after a period of more than 12 months is not justified and, therefore, the impugned communication dated 25th March 1996 and the order of rejection dated 15th January 1998 will have to be quashed and set aside.

7 Relying on the decision of this Court in the case of C.N.Chavda vs.

Director General of Police, Gujarat State, reported in 1992 (1) GLH 209 and the decision of the Apex Court, in the case of State of Gujarat vs. Suryakant Chunilal Shah, reported in 1999 (1) SCC 529, this petition is allowed. The communication dated 25th March 1996 and the order of rejection dated 15th January 1998 are quashed and set aside. The respondent-authorities are directed to expunge adverse remarks as communicated to the petitioner vide communication dated 25th March 1996.

8 Rule is made absolute with no order as to costs.

(ANANT S. DAVE, J.)

(swamy)